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E-Filing

Attorneys for Plaintiff
Exact-Science Productions, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

C 07 2296

EXACT-SCIENCE PRODUCTIONS, LLC,
a California corporation,

CASE NO.:

EDL

Plaintiff,

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT;**

v.

DEMAND FOR JURY TRIAL;

FEMME KNITS INC., HAPA INDUSTRIES,
LTD., FOREVER 21, INC., FOREVER 21
RETAIL, INC., NORDSTROM, INC.,
DELIA*S GROUP INC., ALLOY, INC., and
DOES 1 through 100,

**CERTIFICATION OF INTERESTED ENTITIES
OR PERSONS [CIVIL L.R. 3-16]**

Defendants.

1 Plaintiff EXACT-SCIENCE PRODUCTIONS, LLC ("Exact-Science") through its
 2 attorneys, complaining of Defendants FEMME KNITS INC., HAPA INDUSTRIES, LTD.,
 3 FOREVER 21, INC., FOREVER 21 RETAIL, INC., NORDSTROM, INC., DELIA*S GROUP
 4 INC., ALLOY, INC., and DOES 1 through 100 (collectively "Defendants"), alleges as follows:

5 **JURISDICTION**

6 1. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.,
 7 Sections 1331 and 1338(a), as this action involves claims brought under federal law, the United
 8 States Copyright Act, 17 U.S.C. Section 101 *et seq.*

9 **VENUE AND INTRADISTRICT ASSIGNMENT**

10 2. Exact-Science avers upon information and belief that a substantial part of the
 11 events giving rise to Exact-Science's claims occurred in this District and Exact-Science's
 12 intellectual property rights at issue in this action are situated in this District. In addition, Exact-
 13 Science avers upon information and belief that all Defendants are subject to personal jurisdiction
 14 in this District as they may be found to do business in this District and in the state of California.
 15 Venue is therefore proper in this District pursuant to 28 U.S.C. Sections 1391(b), 1391(c), and
 16 1400(a).

17 3. Because this action is an Intellectual Property Action within the meaning of Civil
 18 Local Rule 3-2(c), the action is to be assigned on a district wide basis.

19 **NATURE OF THE ACTION**

20 4. This is a civil action seeking damages and an injunction for copyright
 21 infringement. As explained below, Defendants have made widespread and repeated use without
 22 permission of an image owned by Exact-Science, contrary to the copyright laws.

23 **THE PARTIES**

24 5. Plaintiff Exact-Science Productions, LLC ("Exact-Science") is a California
 25 Limited Liability Company with its principal place of business at 4130 18th Street, San
 26 Francisco, CA 94114. Exact-Science is in the business of manufacturing, distributing, and
 27 selling apparel, including shirts and sweatshirts.
 28

1 6. Upon information and belief, Defendant Femme Knits Inc. is a California
2 corporation with its principal place of business at 7130 Fenwick Lane, Westminster, California
3 92683.

4 7. Upon information and belief, Defendant Hapa Industries, Ltd. is a Hawaii
5 corporation with its principal place of business at 5777 West Century Blvd., Suite 755, Los
6 Angeles, California 90045.

7 8. Upon information and belief, Defendant Forever 21, Inc. is a Delaware
8 corporation with its principal place of business in California at 2001 S. Alameda St., Los
9 Angeles, California 90058.

10 9. Upon information and belief, Defendant Forever 21 Retail, Inc. is a California
11 corporation with its principal place of business at 2001 S. Alameda St., Los Angeles, California
12 90058.

13 10. Upon information and belief, Defendant Nordstrom, Inc. is a Washington
14 corporation with its principal place of business at 1617 6th Avenue, Seattle, Washington 98101.
15

16 11. Upon information and belief, Defendant Alloy, Inc. is a Delaware corporation
17 with its principal place of business at 151 West 26th Street, 11th Floor, New York, New York
18 10001.

19 12. Upon information and belief, Defendant Delia*s Group Inc. is a Delaware
20 corporation with its principal place of business at 435 Hudson Street, New York, New York
21 10014.

22 13. Upon information and belief, Femme Knits Inc. is engaged in substantial,
23 continuous, and systematic business activities within the state of California and in this District.
24 Femme Knits has purposefully availed itself of the privilege of conducting business in the state
25 of California. Upon information and belief, a portion of Femme Knits' infringing activities
26 alleged herein occurred in the state of California. Further, upon information and belief, Femme
27 Knits performed the acts described herein, or a portion of those acts, knowing that their actions
28 would affect Exact-Science's interests in this District.

14. Upon information and belief, Defendants have engaged in substantial, continuous, and systematic business activities within the state of California. They have purposefully availed themselves of the privilege of conducting business in the state of California. Further, upon information and belief a portion of the other Defendants infringing activities alleged herein occurred in the state of California and in this District.

15. The true names and capacities of defendants sued herein as DOES 1 through 100, inclusive, are unknown to Exact-Science, which therefore sues said defendants by such fictitious names. Exact-Science will amend this complaint to allege their true names and capacities when the same are ascertained.

BACKGROUND

16. Exact-Science is in the business of designing, printing and selling clothing, including t-shirts and sweatshirts, containing designs of visual art. Exact-Science's clothing conveys thought-provoking, iconic images about youth culture and contemporary society. Generally, the designs in Exact-Science's clothing were created by professional artists who sell or license their designs to Exact-Science for inclusion in its clothing.

17. The images in Exact-Science's clothes are the subject of copyright protection under the laws of the United States. At considerable cost and effort, Exact-Science obtained and registered the copyright to a design of visual art entitled, "Heart Shaped Cassette Tape / I Love Music." This design is registered with the United States Copyright Office as VA 1-378-516 (the "Copyrighted Work"). Attached hereto as Exhibit A is a copy of the registration certificate for the Copyrighted Work. Exact-Science owns all rights under the copyright laws in the Copyrighted Work, including the rights to sue and collect for its past and future infringement. It is the unlawful production, sale, distribution and importation of garments containing the Copyrighted Work that are the subject of the present controversy.

18. Upon information and belief, defendant Femme Knits Inc. is engaged in the business of selling garments. Upon information and belief, Femme Knits Inc. sells its garments to retailers throughout the United States and the rest of the world. On information and belief,

1 Femme Knits Inc. also has done business as "Hapa Industries, Ltd." On information and belief,
2 Femme Knits Inc. also uses the brand names "Scrapbook Originals" and "Crafty Couture."

3 19. Upon information and belief, defendant Femme Knits Inc. manufactured,
4 imported offered for sale and sold garments bearing the Copyrighted Work owned by Exact-
5 Science, without license. On information and belief, Femme Knits Inc. sold garments with the
6 Copyrighted Work to defendants Alloy, Inc., Delia*s Group Inc., Forever 21, Inc., Forever 21
7 Retail, Inc., and Nordstrom, Inc. on a continuous and systematic basis, over an extended period
8 of time. Upon information and belief, Defendants sold these shirts through their various retail
9 establishments and over the Internet. Further, Defendants published catalogs and images on the
10 Internet with copied versions of the Copyrighted Work.

11 20. Exact-Science notified Femme Knits Inc. and the other Defendants of their
12 infringement in late 2006 in a series of cease and desist letters. Defendants provided verbal
13 assurances that they had ceased and desisted from further sale of garments with the Copyrighted
14 Work. However, at least one defendant commenced infringement in a new season catalog
15 mailed after so agreeing. Further, at least one defendant continued to sell products with the
16 Copyrighted Work, despite having been provided notice of its infringement.
17

18 **FIRST CLAIM FOR RELIEF- COPYRIGHT INFRINGEMENT**

19 **(17 U.S.C. Section 106, *et seq.*)**

20 21. Exact-Science repeats and realleges the allegations of Paragraphs 1 through 20 as
21 if fully set forth herein.

22 22. Exact-Science holds a valid and exclusive registered copyright to the Copyrighted
23 Work that is the subject of this action and that is evidenced by the copyright registration
24 certificates attached hereto as Exhibit A.

25 23. Upon information and belief, Defendants have imitated, copied and reproduced
26 the Copyrighted Work and Defendants have used and are using the Copyrighted Work in
27 connection with the manufacture, importation, distribution, and sale of goods which display the
28

1 Copyrighted Work. Defendants' use of the Copyrighted Work is and has been made without
2 Exact-Science's consent or authorization and for commercial purposes.

3 24. Furthermore, Defendants' goods include the creation of an unauthorized
4 derivative work of the Copyrighted Work. The image used by Defendants in connection with
5 the manufacture, importation, distribution, and sale of goods is substantially similar to the
6 Copyrighted Work. Defendants' acts are in violation of the exclusive right of the copyright
7 holder to create derivative works or to reproduce its copyrighted works, as articulated in 17
8 U.S.C. Section 106. Defendants' use of the Copyrighted Work is and has been made without
9 Exact-Science's consent or authorization and for commercial purposes.

10 25. The actions and conduct by Defendants as described above infringes upon the
11 exclusive rights of Exact-Science granted by Section 106 of the Copyright Act, 17 U.S.C. § 106,
12 to display, reproduce, distribute, import and sell the registered copyrighted work to the public.

13 26. Such actions and conduct by Defendants constitute copyright infringement under
14 Section 501 of the Copyright Act, 17 U.S.C. § 501. Exact-Science is informed and believes, and
15 on that basis alleges that Defendants have infringed directly and indirectly Exact-Science's
16 exclusive rights in the Copyrighted Work.

17 27. Defendants' infringement has caused harm to Exact-Science including lost profits
18 and lost good will. Further, Defendants have profited from such infringing sales in an amount to
19 be determined at trial.

20 28. Defendants' infringement has been willful, wanton and in reckless disregard of
21 Exact-Science's intellectual property rights.

22 29. As a result of the copyright infringement described above, Exact-Science is
23 entitled to relief including, but not limited to, injunctive relief, actual or statutory damages,
24 punitive damages, statutory costs, attorney's fees, and prejudgment interest.
25
26
27
28

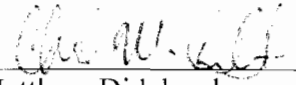
RELIEF REQUESTED

WHEREFORE, Exact-Science prays for relief as follows:

1. For an order permanently enjoining Defendants from infringing Exact-Science's copyrighted images pursuant to Section 502 of the Copyright Act, 17 U.S.C. § 502;
2. For an order directing Defendants to deliver for destruction all apparel and other products in their possession or under their control, bearing or depicting any unauthorized copy or derivative work of the Copyrighted Work, and all negatives, prints, copies, proofs, or other means of making same pursuant to Section 503 of the Copyright Act, 17 U.S.C. § 503;
3. For an award of Exact-Science's actual damages and any of Defendants' additional profits or, in the alternative, that Exact-Science recover statutory damages pursuant to Section 504 of the Copyright Act, 17 U.S.C. § 504;
4. For an award of costs, pursuant to 17 U.S.C., Sections 505;
5. For an award of reasonable attorneys' fees, pursuant to 17 U.S.C., Sections 505;
6. For an award of prejudgment interest on the amount of any award to Plaintiff; and
7. For such other and further relief as the Court deems just and equitable.

Dated: April 27, 2007

CMD ASSOCIATES


By: 
C. Matthew Didaleusky
Attorneys for Plaintiff
Exact-Science Productions, LLC

DEMAND FOR TRIAL BY JURY

Plaintiff Exact-Science Productions, LLC demands a trial by jury.

Dated: April 25, 2007

CMD ASSOCIATES

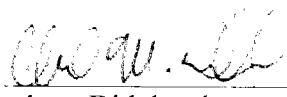
By: 
C. Matthew Didaleusky
Attorneys for Plaintiff
Exact-Science Productions, LLC

CERTIFICATION OF INTERESTED ENTITES OR PERSONS

Pursuant to Civil Local Rule 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: April 27, 2007

CMD ASSOCIATES

By: 
C. Matthew Didaleusky
Attorneys for Plaintiff
Exact-Science Productions, LLC

Certificate of Registration



This is to certify that under the laws of the United States of America, the work of art herein described has been registered in the Copyright Office of the U.S. Department of Justice, and that the registration has been made in the work of art herein described, and that the registration has been made in the work of art herein described.

Monika Felter

San Francisco, California, U.S.A.



Form VA
For a Work of the Visual Arts

REG

VA 1-378-516



W40001378516

EFFECTIVE DATE OF REGISTRATION

OCT 16 2006

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

Title of This Work ▼

NATURE OF THIS WORK ▼ See instructions

"Heart Shaped Cassette Tape / I Love Music"

Digital Illustration (for print on clothing)

Previous or Alternative Titles ▼

Publication as a Contribution: If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give:

Volume ▼

Number ▼

Issue Date ▼

On Pages ▼

2

NOTE

Under the law, the author of a work made for hire is generally the employer, not the employee. See instructions. For any part of the work that was made by hire, the author is provided by the employer or other person for whom the work was prepared as "author" of that part, and leave the space for dates of birth and death blank.

NAME OF AUTHOR ▼

a Genroil Mateo

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

1976

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

Author's Nationality or Domicile
Name of Country

OR ☐ Citizen of USA

☐ Domiciled in San Francisco, CA

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ No

Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship: Check appropriate boxes: See instructions

☐ 3-Dimensional sculpture

☐ Map

☐ Technical drawing

☐ 2-Dimensional artwork

☐ Photograph

☐ Text

☐ Reproduction of work of art

☐ Jewelry design

☐ Architectural work

Name of Author ▼

b

Dates of Birth and Death

Year Born ▼

Year Died ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

Author's Nationality or Domicile
Name of Country

OR ☐ Citizen of

☐ Domiciled in

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☐ No

Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

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☐ 3-Dimensional sculpture

☐ Map

☐ Technical drawing

☐ 2-Dimensional artwork

☐ Photograph

☐ Text

☐ Reproduction of work of art

☐ Jewelry design

☐ Architectural work

3

a

Year in Which Creation of This Work Was Completed

2004

This information must be given in all cases.

Date and Nation of First Publication of This Particular Work

Complete this information ONLY if this work has been published.

Month Feb

Day 15

Year 2005

United States of America

Nation

4

See instructions before completing this space.

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2 ▼

Exact Science Productions, LLC

4130 18th Street, San Francisco, CA 94114

Transfer: If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

Transfer of all rights by the author

APPLICATION RECEIVED

OCT 16 2006

ONE DEPOSIT RECEIVED

OCT 16 2006

TWO DEPOSITS RECEIVED


FUNDS RECEIVED

MORE ON BACK ►

► Complete all applicable spaces (numbers 5-8) on the reverse side of this page.
► See relevant instructions.
► Sign the form at line 8.

DO NOT WRITE HERE

Page 11 of 12

EXAMINED BY 	FORM VA
CHECKED BY	
<input type="checkbox"/> CORRESPONDENCE	FOR
<input type="checkbox"/> Yes	COPYRIGHT
	OFFICE
	USE
	ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☒ No. If so, answer "Yes" why is another registration being sought? (Check appropriate box.)

a. ☐ This is the first published edition of a work previously registered in unpublished form.

b. ☐ This is the first application submitted by this author as copyright claimant.

c. ☐ This is a revised version of the work, as shown by space 6 in this application.

If you answered "Yes," give Previous Registration Number

Year of Registration

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates.b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name

Account Number

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name Address/Apt/City/State/Zip

Deepak Gupta, Esq.
1140 Guerrero Street, San Francisco, CA 94110

Area code and daytime telephone number 646 / 344-9895

Fax number (510) 440-1831

Email deepakgupta@quinnemanuel.com

CERTIFICATION I, the undersigned, hereby certify that I am the

check only one

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of

Exact Science Productions, LLC

Name of author or other copyright claimant, or owner of exclusive rights, A

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date of this application gives a date of publication in space 3; do not sign and submit it before that date.

Deepak Gupta

Date Oct. 10, 2006

Handwritten signature

Certificate
will be
mailed in
window
envelope
to this
address:

Name

Deepak Gupta

Number/Street Apt

1140 Guerrero Street

City/State/Zip

San Francisco, CA 94110

• Complete all necessary spaces
• Sign your application in space 8

1. Application form
2. Nonrefundable filing fee in check or money
order payable to Registrar of Copyrights
3. Deposit material

Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20540-4001

(17 USC §506(a)). Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409 or in any written statement filed in connection with the application, shall be fined not more than \$2,500.